

### **REMARKS**

Applicant respectfully requests that the Examiner enter the foregoing claim amendments, and consider the following remarks.

#### ***The Notar Reference and Section 102***

Claims 1, 3, 7, 8, and 12-14 were rejected under Section 102(b) as being anticipated by Notar et al. (US Patent No. 5,443,763). As discussed with the Examiner on August 3, 2004, Notar does not teach or suggest access to a sensor through an access space in the side of the dispenser. As also discussed with the Examiner, Claim 1 has been amended to make clear that the recited "side" is not a top or bottom side of the dispenser (the original language was not intended to be construed to include a top or bottom side).<sup>1</sup>

For a claim to be anticipated under Section 102, "[e]very element of the claimed invention must be literally present, *arranged as in the claim* . . . [and] [t]he identical invention must be shown in as complete detail as is contained in the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis supplied). Therefore, it is respectfully submitted that Claims 1, 3, 7, 8, and 12-14 are not anticipated by Notar.

#### ***The Notar Reference and Section 103***

It is also respectfully submitted that Claim 1 and all its dependent claims are not unpatentable over Notar under Section 103(a). As discussed in the specification, at page 5, lines 18-23, and with the Examiner, the ability to access the sensor through a side is significant for maintenance and repair. And, locating such access in the side is not just a matter of "obvious choice," because it involves design of a carbonator that both

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<sup>1</sup> Because the amendment has been made to avoid an interpretation of the claim language that was not intended, and not to overcome prior art, it has not been made to surrender any coverage from the intended scope of the claim.

facilitates such sensor access and provides sufficient carbonation for the application. Notar does not teach or suggest that its system could be rotated on its side and still provide its benefits. Moreover, it simply does not teach or suggest sensor access through the sides.

Without a particularized showing "as to the specific understanding or principle within the knowledge of the skilled artisan" that would have made the choice obvious – and there is none here – the rejection is improper. *In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000). "To imbue one of ordinary skill in the art with knowledge of the invention [at issue], when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983).<sup>2</sup>

Therefore, it is respectfully submitted that Claim 1, and all of the claims that depend from Claim 1, should be allowed.

### ***Other Section 103 Rejections***

Under Section 103(a), Claims 4-6 were rejected over Notar in view of Cragun, and Claims 9-11 were rejected over Notar in view of Hassell. It is respectfully submitted that the arguments made above overcome these rejections, because none of these cited references teach or suggest side access as claimed. Applicant also respectfully submits that the combination of these references is improper. As the Federal Circuit Court of Appeals has stated, in determining whether there is a motivation to combine prior art

<sup>2</sup> The Examiner has the burden of showing a *prima facie* case of obviousness. *In re Bell*, 991 F.2d 781, 783 (Fed. Cir. 1993); *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). If such a showing is not made, the rejection must be withdrawn. The showing of obviousness must be "clear and particular," and "broad conclusory statements regarding the teaching" of the prior art are not evidence. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). Also, the showing of a teaching, suggestion, or motivation is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1352 (Fed. Cir. 1998).

teachings, one must be careful to be "guided only by the prior art references and the then-accepted wisdom in the field." *In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000). Here, none of the references show access through a side, nor do they suggest the combination of the elements cited in the rejection.

***Miscellaneous***

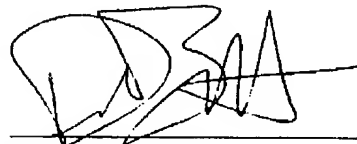
Claim 2 has been amended to change a "the" to an "a". Also, new dependent Claims 15 and 16 have been added to recite specific aspects of the invention.

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If there are any questions concerning this response, please call Dennis Braswell at the telephone number set forth below.

**Please direct all correspondence to:**  
**Dennis Braswell**  
**105 Soost Court**  
**Mobile, Alabama 36608**  
**Telephone (251) 414-2969.**

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Date



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Dennis Braswell  
Attorney for Applicant  
Registration No. 35,831